IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 266 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MANISHKUMAR MOHANLAL

Appearance:

1. Criminal Appeal No. 266 of 1993

Mr S J Dave, APP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,4

MR PK JANI for Respondent No. 2-3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/03/2003

ORAL JUDGEMENT

The State of Gujarat has preferred this appeal under section 378 of the Code of Criminal Procedure, 1973, (for short, 'the Code') for setting aside the judgment and acquittal order dated 27.11.1992 recorded in criminal case no.996/87 by the learned Judicial Magistrate First Class, Kalol in Mehasana District under which the learned Magistrate acquitted the present respondent from the offence punishable under section 16

of the Prevention of Food Adulteration Act, 1954. The case of the prosecution is that the respondents herein are vendors having their shops in the market. The complainant-Food Inspector had visited the shop of the respondents on 21.12.1986 at about 12 noon and sample of jaggery was collected. It was sent to the public analyst for chemical analysis. Report was received showing that the jaggery was adulterated. Therefore, after obtaining necessary consent, a complaint was filed which was registered as criminal case no.966/87. After the trial, the respondents came to be acquitted by the aforesaid judgment and order of the trial court. Hence this acquittal appeal.

2. During the course of hearing, it has been pointed out that the witnesses have deposed before the trial court that the jaggery in question was not meant for human consumption. It has also come on record that the jaggery from a gunny bag was collected and the jaggery was not properly mixed up. This shows that the sample of jaggery was not the representaaive quantity of the entire lot. This court has observed in a decision in Criminal Revision Application No.266 of 1992 dated 24.2.2003 (Coram: D P Buch, J.] that when a sample is required to be collected, it should be of representative quantity. Therefore, if it is a liquid food, then, it should be stirred accordingly. If it is a solid food, it should be properly mixed up. This was not done in the present case and therefore, there is apparent violation of the requirement as said in the aforesaid decision. Then it has also been observed by the trial court that the complainant has failed to prove as to what was the condition of the seal and how the sealing process was undertaken. It is also not on record as to under which number the sample was sent for chemical analysis. The prosecution has not been able to satisfy the aforesaid observation made by the trial court and to show that they are contrary to the evidence on record.

3. Considering the aforesaid observations of the trial court and considering the fact that this is an acquittal appeal wherein it would be very difficult to dislodge the findings of fact recorded by the trial court. It is not shown that the findings of fact have been recorded without evidence or that they are contrary to the evidence. When the findings of fact have been recorded in accordance with the evidence, the same cannot be disturbed in exercise of jurisdiction in dealing with the acquittal appeal. It is well settled that this court should refrain from lightly brushing aside the findings of fact recorded by the trial court. The court can enter

into the said area only when it is found that the judgment and order of acquittal are illegal and perverse which does not appear on the face of the record in this case.

4. Considering the aforesaid aspects of the case, there is no merit in this acquittal appeal and the same is required to be dismissed.

For the foregoing reasons, this appeal is dismissed.

5.3.2003 [D P Buch, J.]
msp